

REMARKS

The Applicants note that, except for the 35 U.S.C. § 102 rejection based on U.S. Patent 5,846,461 (hereinafter "Collins"), the Examiner acknowledges that the remaining 35 U.S.C. §§ 102, 103, and 112 rejections included in the first Office Action have been overcome. Moreover, the Applicants affirm the Examiner's constructive election of claims 1, 2, 5-7, 20, and 21. However, claim 20 is dependent on cancelled claim 14. Therefore, claim 20 has been cancelled in addition to the non-elected claims 8, 11-13, and 22.

Turning now to the Examiner's rejections included in the second Office Action, claims 1, 2, and 5-7 were again rejected under 35 U.S.C. § 102 as being anticipated by Collins. Claims 1, 2, and 5-7 were also rejected under 35 U.S.C. § 103 as being unpatentable over U.S. Patent 5,735,092 (hereinafter "Clayton") in view of U.S. Patent 5,091,436 (hereinafter "Frisch"). Furthermore, claim 21 was rejected under 35 U.S.C. § 103 as being unpatentable over Clayton in view of Frisch as evidenced by U.S. Patent 4,388,366 (hereinafter "Rosato").

Regarding the rejection under 35 U.S.C. § 102 based on Collins, the Examiner has suggested incorporating the limitations of claim 2 (regarding the rigidity of the foam core) in claim 1 to overcome the rejection. As such, the Applicants have amended claim 1. Now, claim 1 includes reference to the polyisocyanurate foam core having an iso index above 200 and the polyurethane foam core having an iso index above 120 as discussed on Page 7, Lines 9-12, of the present application. Consequently, claim 1 is allowable over Collins.

However, as discussed hereinbelow, the Applicants disagree with the Examiner's positions regarding the remainder of the above-discussed rejections. For example, regarding the rejection according to the combination of Clayton and Frisch, Clayton is directed to a recovery board 10 having a foam core 11 with lower face 12 and upper face 13. A gypsum board 14 is mated to the lower face 12, and a sheet of facer material 15 is bonded to the upper face 13. The sheet of facer material 15 can be a reinforced polymer material or reinforced cellulosic material. Either way, the sheet of facer material 15 can be reinforced with various filler materials. However, as discussed in Column 6, lines 33-43, the foam core 11 (as opposed to the sheet of facer material 15) is formed through the mixing and subsequent application of only liquid components. As such, the foam core 11 is not reinforced.

Frisch is directed to a reinforced foam composite. As seen in Figs. 1 and 2, and discussed in Column 21, lines 48-57 (and repeated in Column 19, lines 25-35), the reinforced foam composite includes continuous fiberglass roving 22, continuous strand mat 24, chopped glass fiber (or other particulate filler) 26, and foam core 28. As seen in Fig. 2, and as confirmed in Column 21, lines 53-54, the foam core 28 is unfilled. That is, as reinforced in Column 19, lines 34-35, "the core foam (28) consists of matrix resin foam without reinforcement." Therefore, the foam core 28 does not include filler material.

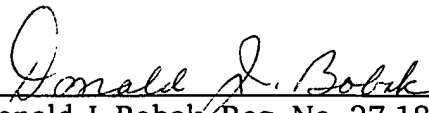
Because Clayton discloses that the foam core 11 is not reinforced, and because Frisch also discloses that the foam core 28 does not include filler material, it would be impossible for the combination of Clayton and Frisch to arrive at the present invention. The present invention as recited in claim 1 is directed to a foam core including a filler material selected from the group consisting of rubber-tire vents, EPDM scrap material, plastic chips, polyurethane scrap, polyisocyanurate scrap, scrap rubber from recycled tires, wood chips, fiberglass strands and mixtures thereof. The combination of Clayton and Frisch does not suggest such filler materials, and, in fact, teaches away from the use of filler material in the foam core 11, 28 in general. The only possible similarity between the combination of Clayton and Frisch and the present invention would be the use of chopped glass fiber 26 in the resin adjacent the continuous strand mat 24 and foam core 28. Consequently, the present invention as claimed in claim 1 can be distinguished from the combination of Clayton and Frisch.

In conclusion, the present invention as recited in claim 1 overcomes the Examiner's rejection according to the combination of Clayton and Frisch. As such, claim 1 is deemed allowable, and claims 2, 5-7, and 21 depending therefrom are deemed allowable due to their dependency. Moreover, the rejections of claims 1, 2, 5-7, and of claim 21 according to the judicially created doctrine of obviousness-type double patenting is also overcome. The doctrine of obviousness-type double patenting requires that the Examiner must first show a prima facie case of obviousness. However, as discussed hereinabove, claim 1, and the claims depending therefrom, overcome the obviousness rejection based on the combination of Clayton and Frisch, as well as Clayton, Frisch and Rosato, directed against claim 21. Consequently, the obviousness-type double patenting rejections are also overcome.

Application No.: 10/020,826
Amendment dated: January 23, 2004
Reply to Office Action of October 23, 2003

Should the Examiner wish to discuss any of the foregoing in more detail, the undersigned attorney would welcome a telephone call.

Respectfully submitted,


Donald J. Bobak, Reg. No. 27,182
Renner, Kenner, Greive, Bobak, Taylor & Weber
First National Tower - Fourth Floor
Akron, Ohio 44308-1456
Telephone: (330) 376-1242
Facsimile: (330) 376-9646
E-mail: djbobak@rennerkenner.com

Attorney for Applicants

Dated: January 23, 2004